

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

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Refer Reply To:

CC:CORP:B04

PLR-124127-06

Date:

August 17, 2006

LEGEND

Parent =

Purchaser =

Seller =

Target1 =

Target2 =

Date A =

Date B =

Date C =

Date D =

Company Official 1 =

Company Official 2 =

Company Official 3 =

Dear

This letter responds to a letter dated April 28, 2006, submitted on behalf of Parent and Seller, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. The information provided in that letter and in later correspondence is summarized below.

Parent and Seller are requesting an extension to file a § 338(h)(10) election under § 338(h)(10) of the Internal Revenue Code and § 1.338(h)(10)-1T(c) of the Income Tax Regulations with respect to Purchaser's acquisition of the stock of Target1 and Target2 (sometimes hereinafter referred to as the Election) on Date B. (Citations in this letter to regulations under § 338 are to regulations in effect on Date B.)

Parent is a corporation that was the common parent of an affiliated group of corporations that filed a consolidated Federal income tax return for the tax year ended Date C. Purchaser is a subsidiary of Parent.

On Date A, Purchaser and Seller entered into a purchase agreement for Purchaser to acquire all of the stock of Target1 and Target2 from Seller (a corporation). On Date B, Purchaser acquired all of the stock of Target1 and Target2 from Seller in exchange for cash and a promissory note, pursuant to the purchase agreement. It is represented that Purchaser's acquisition of the stock of Target1 and Target2 qualified as a "qualified stock purchase," as defined in § 338(d)(3).

The Election was due on Date D, but for various reasons a valid Election was not filed. However, all relevant Federal income tax returns have been filed consistent with a

valid election having been made. After the due date for the Election, it was discovered that a valid Election had not been filed. Subsequently, this request was submitted, under § 301.9100-3, for an extension of time to file the Election. The period of limitations on assessment under § 6501(a) has not expired for Parent's consolidated group's, Target1's, Target2's, or Seller's consolidated group's taxable years in which the acquisition occurred, the taxable years in which the Election should have been filed, or any taxable years that would have been affected by the Election had it been timely filed.

Section 338(a) permits certain stock purchases to be treated as asset acquisitions if: (1) the purchasing corporation makes or is treated as having made a § 338 election or a § 338(h)(10) election; and (2) the acquisition is a "qualified stock purchase."

Section 338(h)(10) permits the purchasing and selling corporations to elect jointly to treat the target corporation as deemed to sell all of its assets and distribute the proceeds in complete liquidation. A § 338(h)(10) election may be made for target only if purchaser acquires stock meeting the requirements of § 1504(a)(2) from a selling consolidated group, a selling affiliate, or the S corporation shareholders in a qualified stock purchase. Section 1.338(h)(10)-1T(c)(1).

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a). Section 301.9100-2 provides automatic extensions of time for making certain elections. Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

In this case, the time for filing the Election is fixed by the regulations (i.e., § 1.338(h)(10)-1T(c)(2)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Parent and Seller to file the Election, provided Parent and Seller show they acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government.

Information, affidavits, and representations submitted by Parent, Seller, Company Official 1, Company Official 2, and Company Official 3 explain the circumstances that resulted in the failure to timely file a valid Election. The information establishes that the Parent reasonably relied on a qualified tax professional who failed

to make, or advise Parent to make, a valid Election. See § 301.9100-3(b)(1)(v). The information further establishes that the request for relief was filed before the failure to make a valid Election was discovered by the Internal Revenue Service and that the interests of the government will not be prejudiced if relief is granted. See § 301.9100-3(b)(1)(i).

Based on the facts and information submitted, including the representations made, we conclude that Parent and Seller have shown they acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government. Accordingly, an extension of time is granted under § 301.9100-3, until 45 days from the date on this letter, for Parent and Seller to file the Election with respect to the acquisition of the stock of Target1 and Target2, as described above.

WITHIN 45 DAYS OF THE DATE ON THIS LETTER, Parent and Seller must file the Election on Form 8023. A copy of this letter must be attached to Form 8023. Also, a copy of this letter and a copy of Form 8023 (or Form 8883, if appropriate) must be attached to all relevant tax returns. Alternatively, instead of attaching a copy of this letter to the returns, taxpayers filing their returns electronically may attach a statement to the return that provides the date and control number of the letter ruling.

The above extension of time is conditioned on the taxpayers' (Parent's consolidated group's, Seller's consolidated group's, Target1's and Target2's) tax liability (if any) being not lower, in the aggregate, for all years to which the Election applies, than it would have been if the Election had been timely made (taking into account the time value of money). No opinion is expressed as to the taxpayers' tax liability for the years involved. A determination thereof will be made by the applicable Director's office upon audit of the Federal income tax returns involved. Further, no opinion is expressed as to the Federal income tax effect, if any, if it is determined that the taxpayers' tax liability is lower. Section 301.9100-3(c).

We express no opinion as to: (1) whether the acquisition/sale of the Target1 and Target2 stock qualifies as a "qualified stock purchase" under § 338(d)(3); (2) whether the acquisition/sale of Target1 and Target2 stock qualifies for § 338(h)(10) treatment; or (3) any other tax consequences arising from the Election.

In addition, we express no opinion as to the tax consequences of filing the Election late under the provisions of any other section of the Code and regulations, or as to the tax treatment of any conditions existing at the time of, or resulting from, filing the Election late that are not specifically set forth in the above ruling. For purposes of granting relief under § 301.9100-3, we relied on certain statements and representations made by the taxpayers. However, the Director should verify all essential facts. In addition, notwithstanding that an extension is granted under § 301.9100-3 to file the

Election, penalties and interest that would otherwise be applicable, if any, continue to apply.

Parent must provide Seller with a copy of this letter.

This letter is directed only to the taxpayer(s) who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to the power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Ken Cohen

Ken Cohen
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel (Corporate)

cc: